

SECTION 6: MODEL WATER EFFICIENT LANDSCAPE ORDINANCE (MWELO) FUTURE REVISIONS & PROCESS UPDATES

RECOMMENDATION #3: MWELO Enforcement: Aligning with the CalGreen Title 24 Revision Process to Maximize Enforcement

Background

One of the most significant areas of uncertainty regarding the effectiveness of California's Model Water Efficient Landscape Ordinance (MWELO) pertains to enforcement. Numerous stakeholders appearing before the Independent Technical Panel (ITP) voiced concerns about the rigor and consistency of enforcement by local land use and housing agencies.

In April 2015, Governor Brown's Executive Order (EO) B-29-15 brought new attention and urgency to landscape water use enforcement issues:

- In response to Directive 11 of the EO, the Department of Water Resources (DWR) initiated an update of MWELO effective December 1, 2015 with new requirements for local agencies to report to the State on enforcement activities;
- In response to Directive 7 of the EO, the Building Standards Commission (BSC) and the Department of Housing and Community Development (HCD) conducted an emergency rulemaking that for the first time placed water budget requirements in the mandatory portion of the CALGreen state building code (CCR Title 24, Part 11).

Placing landscape irrigation hardware and water budgeting requirements inside the code books used by the statewide network of local building code officials raised the prospect of more consistent and effective enforcement of MWELO – not immediately, but over time. However, since the CALGreen revisions were completed in late May, while the MWELO revision process extended through June and July, there arose almost immediately a concern that CALGreen would be left with provisions that were not consistent with MWELO as subsequently revised. Indeed, some provisions of the final 2015 version of MWELO were not the same as the emergency additions to CALGreen adopted in May. By year's end, HCD was considering proposals to *remove* certain landscape provisions from CALGreen that had just been adopted in 2015. Removal without replacement would represent a potential setback for MWELO enforcement.

The ITP has been informed by DWR staff of interest in the Department to establish a regular periodic review of MWELO to consider and adopt revisions as technology and other circumstances impacting landscape water use continue to evolve in California. The ITP welcomes this concept, and believes that the benefit of periodic review of MWELO could be amplified greatly if the cycle of review were harmonized with the triennial code review cycle of the CALGreen building code.

CALGreen and other state building standards are required by statute to be updated at least once every three years.¹ The ITP believes that statutory direction to establish a similar timetable for MWELo review would provide assurance to all State and local agencies, code officials, and other stakeholders that DWR will be a reliable and consistent partner in updating building standards that improve landscape water use efficiency. Coordination with CALGreen should begin as soon as possible, on a schedule that is mutually agreeable to State agencies.

Purpose Statement

The purpose of this recommendation is to maximize MWELo enforcement, and maintain steady progress toward improved landscape water efficiency, by establishing a standardized MWELo revision process on a triennial cycle that complements the CALGreen Title 24 triennial revision cycle. The MWELo revision cycle should be coordinated with the CALGreen cycle in order to finish MWELo revisions in advance of the finalized CALGreen revisions, such that MWELo revisions could then be adopted in the pending round of CALGreen revisions. This standardized revision process between MWELo and CALGreen would allow for building departments to upgrade MWELo enforcement while avoiding uncoordinated, unanticipated, and excessive or redundant administrative update processes that seek to occasionally adopt various new regulations in a confusing or *ad hoc* manner.

Coordination between DWR, the BSC, and other code adopting agencies should begin as soon as practical. A cooperative agreement harmonizing MWELo review with triennial code review should be entered into before the end of 2016.

The Independent Technical Panel Recommends That:

-- the Water Conservation in Landscaping Act (Government Code, Article 10.8, sections 65591 – 65599), be amended at the appropriate place to add the following:

Sec. _____. (a) At an interval no greater than once in every three years, the department, after holding one or more public hearings, shall --

(1) by regulation, update the model water efficient landscape ordinance adopted pursuant to Chapter 1145 of the Statutes of 1990; or

(2) make an affirmative determination that an update to the model ordinance at such time is not a useful or effective means to improve either the efficiency of landscape water use or the administration of the ordinance.

(b) Not later than December 31, 2016, the department shall enter into a cooperative agreement with the Building Standards Commission, the Department of Housing and Community Development, and the Division of the State Architect in the Department of General Services setting out the timetables and mutual responsibilities for the coordination of the department's ordinance update process with the triennial revision cycle of state building standards, including Title 24, Part 11.

¹ Section 18942(a) of the *Health and Safety Code* states in part: The [Building Standards Commission] shall publish, or cause to be published, editions of the code in its entirety once in every three years. In the intervening period the commission shall publish, or cause to be published, supplements as necessary.